

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

HILDA MORALES

Claimant

VS.

EXCEL CORPORATION

Respondent

Self-Insured

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Docket No. 220,221

ORDER

Respondent appealed the February 12, 1998, preliminary hearing Order for Compensation entered by Administrative Law Judge Kenneth S. Johnson.

ISSUES

The Administrative Law Judge granted claimant's request for temporary total disability compensation. Respondent contends the Administrative Law Judge exceeded his jurisdiction by imposing certain conditions on the termination of the benefits. Claimant, on the other hand, in her brief, contends the Appeals Board does not have jurisdiction to review this preliminary hearing order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing transcript and considering the briefs of the parties, the Appeals Board finds as follows:

The Appeals Board, before discussing the merits of respondent's appeal, will first address the issue of whether it has jurisdiction to review the preliminary hearing order. The only benefit requested by the claimant at the preliminary hearing was temporary total disability compensation to be paid from November 4, 1997, and continuing. The Administrative Law Judge granted claimant's request for temporary total disability compensation from November 20, 1997, and continuing. The respondent appealed and contends the Administrative Law Judge exceeded his jurisdiction by ordering the temporary total disability benefits to be paid "until further order or until certified by as having reached maximum medical improvement; or released to regular job; or becomes re-employed, whichever comes first."

The Appeals Board has limited jurisdiction to review an Administrative Law Judge's findings made pursuant to the preliminary hearing statute. The appealing party has to either allege that the administrative law judge exceeded his jurisdiction pursuant to K.S.A. 1997 Supp. 44-551(b)(1), or raise a jurisdictional issue listed in K.S.A. 1997 Supp. 44-534a(a)(2). The Appeals Board has had the opportunity on numerous other occasions to address whether it has jurisdiction to review an administrative law judge's preliminary hearing order that grants or denies a request for temporary total disability compensation. The preliminary hearing statute, K.S.A. 1997 Supp. 44-534a(a)(2), specifically authorizes the administrative law judge to grant or deny temporary total disability compensation or medical compensation pending a full hearing on the matter. The Appeals Board finds, at this juncture of the proceeding, the Administrative Law Judge did not exceed his jurisdiction when he granted claimant's request for temporary total disability compensation.

Therefore, the Appeals Board finds it lacks jurisdiction to review this preliminary hearing order.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's application for review should be, and is hereby, dismissed and the preliminary hearing Order for Compensation entered by Administrative Law Judge Kenneth S. Johnson dated February 12, 1998, remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of March 1998.

BOARD MEMBER

c: John D. Shultz, Dodge City, KS
D. Shane Bangerter, Dodge City, KS
Kenneth S. Johnson, Administrative Law Judge
Philip S. Harness, Director